

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ROBERT THOMAS ARNTZ,

Defendant-Appellee.

UNPUBLISHED

May 19, 2011

No. 300005

Oakland Circuit Court

LC No. 09-009004-AR

Before: CAVANAGH, P.J., and TALBOT and STEPHENS, JJ.

PER CURIAM.

The prosecutor challenges the circuit court's vacating of the district court conviction of Robert Thomas Arntz for domestic violence¹ based on the erroneous admission of evidence involving a recording of the victim's 9-1-1 telephone call. We vacate.

During trial in the district court, the prosecutor sought to admit an audio recording of a 9-1-1 call made by the victim while the alleged domestic assault was occurring. Admission of this evidence was initially submitted in accordance with statutory authority pertaining to statements in "offense[s] involving domestic violence" that might otherwise be inadmissible as hearsay.² The district court precluded admission under the cited statutory authority based on the failure to comply with the necessary notice provision for disclosure of "15 days."³ In response, the prosecutor sought admission of the record as an excited utterance, being a "statement relating to a startling event or condition made while the declarant was under the stress or excitement caused by the event or condition."⁴ The district court postponed a determination on the admissibility of the recording pending the progress of the proceedings.

¹ MCL 750.81(2).

² MCL 768.27c(1), (2).

³ MCL 768.27c(3).

⁴ MRE 803(2).

The victim testified but acknowledged difficulties with her memory of the events. The prosecutor again requested the district court admit the 9-1-1 recording to clarify what occurred and Arntz's actual verbalizations during the conflict. Over Arntz's objections, the district court admitted the recording by playing approximately three minutes of the recorded exchange for the jury. Following his jury conviction, Arntz appealed to the circuit court asserting error in the admission of the 9-1-1 recording in addition to other issues not raised before this Court. The circuit court determined the trial court abused its discretion in admitting the recording because it was inadmissible under the statute⁵ based on the failure to provide adequate notice. The circuit court vacated the jury's verdict and remanded for a new trial.

This Court reviews a trial court's decision to admit or exclude evidence for an abuse of discretion.⁶ We review the issue of whether the admission of evidence is precluded by either statute or rule of evidence de novo.⁷

The statutory provision pursuant to which the prosecutor sought to initially admit the challenged evidence allows for hearsay statements to be admissible at trial in circumstances that involve domestic violence offenses that meet certain preconditions.⁸ Although the 9-1-1 recording meets the majority of technical requirements or preconditions for admissibility under this statute⁹, the district court correctly ruled that it would not permit admission of the recording because the prosecutor violated the statutory notice requirement¹⁰ by failing to provide defense counsel with a copy of the recording until after the jury had been selected in this case without having demonstrated good cause for delay. But, contrary to the ruling of the circuit court, the failure of the evidence to qualify for admission under the statutory authority did not totally preclude its admissibility as "under the Michigan Rules of Evidence, evidence that is properly admissible for one purpose need not be excluded because it is not admissible for another purpose."¹¹ Further, "under the theory of multiple admissibility, only one proper theory under which the evidence is admitted is required."¹² The mere failure of the district court to elucidate the rule of evidence it relied on to admit this evidence does not necessitate vacating Arntz's conviction.

⁵ MCL 768.27c.

⁶ *People v Roper*, 286 Mich App 77, 90; 777 NW2d 483 (2009).

⁷ *Id.* at 91.

⁸ MCL 768.27c.

⁹ MCL 768.27c(1), (2).

¹⁰ MCL 768.27c(3).

¹¹ *People v Bauder*, 269 Mich App 174, 187; 712 NW2d 506 (2005).

¹² *Id.* at 188.

The victim's statements while speaking with the emergency operator constituted hearsay as they were being offered for their truth in an effort to prove or clarify what occurred during the incident involving Arntz.¹³ Despite constituting hearsay, these statements were admissible under the excited utterance exception as relating "to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition."¹⁴ There is no dispute that the recorded conversation with the emergency operator occurred contemporaneous with the events involving the confrontation between Arntz and the victim. As the 9-1-1 recording was admissible under the hearsay exception as an excited utterance, the circuit court erred in vacating Arntz's conviction.

We vacate the circuit court's ruling and reinstate Arntz's jury conviction for domestic violence. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Michael J. Talbot
/s/ Cynthia Diane Stephens

¹³ MRE 801(c).

¹⁴ MRE 803(2).